

*United States Attorney
Southern District of New York*

November 18, 2019

BY ECF & ELECTRONIC MAIL

Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Mark S. Scott*, S10 17 Cr. 630 (ER)

Dear Judge Ramos:

The Government submits this brief letter in opposition to the defendant's proposed inclusion of a standalone good faith jury instruction. Such an instruction is unnecessary in light of the current jury instructions. The Second Circuit "has long adhered to the view held by a majority of the circuits that a district court is not required to give a separate 'good faith defense' instruction provided it properly instructs the jury on the government's burden to prove the elements of knowledge and intent, because, in so doing, it necessarily captures the essence of a good faith defense." *United States v. Al Morshed*, 69 F. App'x 13, 16 (2d Cir. 2003). As the Second Circuit has noted, standard instructions on knowledge and intent "capture the essence of the good faith defense, for someone cannot believe in good faith that he was acting properly and within the law if he knowingly" and intentionally committed the charged offense. *Id.* The current charge adequately charges the jury on the issues of knowledge and intent—including a reference in the conscious avoidance charge to the fact that if the jury "find[s] that [Scott] actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact." The current jury charge is more than sufficient and nothing further is warranted in this case.

Respectfully submitted,

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by: /s/
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